Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	FCC 01-157
Universal Service	)	
Multi-Association Group (MAG) Plan for	)	
Regulation of Interstate Services of	)	CC Docket No. 00-256
Non-Price Cap Incumbent Local Exchange	)	
Carriers and Interexchange Carriers	)	

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING,
CONCERNING HIGH COST SUPPORT FOR RURAL CARRIERS

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**COMMENTS
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NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association ("NTCA") submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking* ("*FNPRM*"), FCC 01-157, released on May 23, 2001, in the proceeding captioned above.[1] NTCA is a non-profit corporation established in 1954. NTCA represents 545 rural incumbent local exchange carriers ("ILECs"). Its members are full service telecommunications companies providing local, wireless, cable, Internet, satellite and long distance services to rural communities throughout the United States. All NTCA members are small carriers defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[1] *Fourteenth Report and Order, Twenty-Second Order on Reconsideration (Order), and Further Notice of Proposed Rulemaking (FNPRM), In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local*

I. INTRODUCTION

On May 10, 2001, the FCC adopted a new, rural universal service plan largely consistent with the recommendations of the Rural Task Force ("Task Force").[2] The Commission declined, however, to adopt at this time the proposed freeze of high-cost support per loop upon initiation of service by a competitive eligible telecommunications carrier ("CETC") in a rural carrier's study area.[3]

Nonetheless, the Commission noted that comments filed by the Task Force clearly stated that the purpose of this proposal is to prevent "excessive fund growth" of the high cost loop ("HCL") fund following competitive entry.[4] The Commission now seeks further comment on alternative measures to prevent growth in the universal service fund as a result of an incumbent's loss of lines to a new CETC.[5] Commenters are also asked to address whether such measures are necessary to prevent excessive fund growth during the five-year period of the new plan.

II. THE "COMPETITIVE NEUTRALITY" PRINCIPAL DOES NOT REQUIRE THAT A COMPETITOR RECEIVE THE SAME SUPPORT AS THE INCUMBENT, BASED ON THAT INCUMBENT'S COSTS.

Congress called for a universal service mechanism that is sufficient and also able to provide comparable rural and urban rates and services. The Act's mandate says

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Exchange Carriers and Interexchange Carriers, CC Docket Nos. 96-45, 00-256, FCC 01-157 (rel. May 23, 2001).

[2] The FCC agreed with the submission of the Federal-State Joint Board on Universal Service ("Joint Board") that the Rural Task Force recommendation is "a good foundation for implementing a rural universal service plan that benefits consumers and provides a stable environment for rural carriers to invest in rural America." *In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision,* CC Docket 96-45, FCC 00J-4, at para. 1, (rel. December 22, 2000).

[3] *Order* at paras. 123-130.

[4] *Order* at para. 125. *See also*, *Rural Task Force Recommendation* at 3. The Federal-State Joint Board on Universal Service also agreed with the Rural Task Force that the Commission should freeze support when a competitor begins providing services in a given study area. *See Recommended Decision*, FCC 00J-4 at para. 18.

[5] *FNPRM* at paras. 207, 209.

nothing about restricting support due to growth in the fund. Decisions concerning universal service support mechanisms should not be made on the basis of a mechanism's fund-sizing ability.[6] The "sufficiency" requirement is the only lawful measure of the federal fund's size.[7] The Commission cannot comply with this "sufficiency" requirement if it arbitrarily imposes a cap or static measure on individual or overall support merely to restrict fund growth. It is also not free to violate other provisions of Section 254 in its zeal to restrict the size of the fund. The very basis of the Commission's questions is therefore erroneous.

The fund growth "problem" the FCC discusses in its *FNPRM* is of its own making. The Commission has determined that "competitive neutrality" requires a competitor to receive the same per-line dollar amount of universal service support that is received by the incumbent, based on the incumbent's costs. NTCA believes that the rules concerning portability of support need not require this "same per-line support" interpretation. NTCA does not contest the notion that support should be available to competitors designated as eligible telecommunications carriers (ETCs).[8] However, nothing in Section 214 or Section 254 requires that ETCs receive the same support as the incumbent, or that it be based on that incumbent's costs. This approach "guts Section

[6] *See* NTCA comments, CC Docket No. 96-45, FCC 01-8, February 26, 2001, at 13.

[7] *NTCA comments In the Matter of the Rural Task Force Recommendation to the Joint Board on Universal Service*, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 10. *See also,* Comments of the Rural Telephone Coalition, CC Docket No. 96-45, December 22, 1998 at iii: "It is perfectly valid for the Joint Board to seek to maintain nationwide funding at a level that does not unnecessarily burden any consumer group. But it is patently unlawful for the Joint Board or the Commission to treat preventing significant growth of the federal fund over its current level as an independent test of a suitable federal mechanism."

[8] *See* NTCA comments, CC Docket No. 96-45, FCC 01-8, February 26, 2001 at 12. *See also*, Comments of the Rural Telephone Coalition, January 26, 1998, CC Docket No. 96-45, DA 98-2, (Report to Congress) at 24.

254(e) and undermines the Commission's ability to enforce Section 254 (e) and (k)."[9] Any "solution" chosen by the FCC should address this self-created problem without forcing ILECs to accept yet another per-line cap simply because the Commission will not see beyond allowing competitors the same per-line ILEC support.[10]

A CETC should only receive sufficient support that is based on its own costs.[11] The Commission should heed the concerns voiced by parties such as the Montana Telecommunications Association:

> "it is still possible for a [CETC] to game the system effectively by 'entering' a service territory as an ETC using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the incumbent's retail services where facilities-based service is not cost effective. Thus, it is conceivable that a wireless carrier, for example, could obtain ETC status without incurring the costs, or providing the quality of service comparable to the incumbent, and yet obtain per-line support at the incumbent's level. The incumbent's per line support would represent costs far in excess of those associated with the CETC's costs or service. The CETC effectively could receive a windfall…"[12]

Conversely, a rural competitor may be hindered if limited to support based upon the incumbent's costs. The Rural Independent Competitive Alliance pointed out that at times the most economic and efficient way to respond to requests from neighboring communities to extend levels and quality of service into areas historically served by large

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[9] NTCA comments, CC Docket No. 96-45, FCC 01-8, February 26, 2001, at 13. Section 254(k) provides: "A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.C. § 254(k). Section 254 (e) provides that carriers receiving support shall use the support only for the provision, maintenance, and upgrade of facilities and services for which the support is intended. 47 U.S.C. § 254(e).

[10] The Multi-Association Group (MAG) Plan does endorse a per-line freeze. However, the is tied directly to incentive regulation and structured to synchronize with the revenue per-line freeze that carriers would opt for when choosing incentive regulation – a very different situation from that proposed by the Task Force. *See Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Notice of Proposed Rulemaking, 66 Fed. Reg. 7725 (Jan. 25, 2001).

[11] *See* NTCA comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 12.

companies is to overbuild. In these situations, because the incumbent's plant and switching facilities is old and/or in ill repair, just purchasing the plant would not improve service. These companies have increased service offerings with newly constructed facilities but have been limited to support received by the ILEC.[13] In either case, the correct alternative would be a cost-based portability mechanism, "whereby universal service support to the CETC is attributed to the CETC's per line disaggregated costs of providing universal service in its designated service territory."[14]

The Act does not suggest that the incumbent's support should be frozen at the time an ETC begins service in an area served by a rural telephone company.[15] Competition is not established by the mere presence of a CETC in an ILEC's study area. In the absence of viable competition, customers and regulators will still expect the ILEC to provide the "supported" services and continue to keep pace with the evolving definition of universal service. Rural ILECs in high cost areas will be unable to make the investments needed to deliver these services or advanced services if support is frozen at arbitrary points which have no relationship to the general availability of supported services to consumers in high cost areas. In sum, "the proposal [to freeze support] has significant drawbacks, including administrative complexity and disincentives to infrastructure investment by rural carriers."[16] A cost-based portability mechanism is a better alternative.

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[12] Comments of the Montana Telecommunications Association (MTA), CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 3-4.
[13] *See*, generally, Comments of the Rural Independent Competitive Alliance, CC Docket No. 96-45, FCC 00J-3, November 3, 2000.
[14] MTA comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 4.
[15] *See,* e.g., Section 251(f), rural telephone companies exempted from certain interconnection obligations.
[16] *Order* at para. 123.

IV. THE COMMISSION SHOULD DEAL CONCURRENTLY WITH THE POTENTIAL FOR STRANDED INVESTMENT.

NTCA and others in this proceeding have repeatedly asked the Commission to first address the issue of stranded investment that would result from application of a rule permitting CETCs to recover support based on ILEC costs.[17] The Virgin Islands Telephone Corporation urged the Commission to adopt a safeguard now and formally address how rural telephone companies will recover actual costs in the event support revenue decline as CETCs increase their share of loops.[18] Similarly, the Nebraska Rural Independent Companies warned: “if the FCC waits for competitive entry to lead to stranded costs before acting, it could directly result in pressure on local ratepayers.”[19] TCA suggested the Commission examine this “distinct possibility and protect rural carriers and the customers they serve” when modifying the Task Force proposal.

> Rural companies could be irreparably harmed by the RTF’s frozen per-line support recommendation. Those rural ILECs who face 1) either future competition or a certain competitor who is not yet providing service and 2) who have also committed to, or in the process of, a major construction program would certainly suffer from frozen support upon the simple certification of a CETC within the service area. To deny a rural carrier these funds, due to frozen support, would be to deny a principle of universal service – that support be sufficient.[20]

In replacing the original plan for freezing support, whatever the measure may be, NTCA urges the Commission to ensure concurrently that incumbent LECs also be permitted to make adjustments to the extent that costs associated with the regulatory mandate cannot

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[17] NTCA comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 12-13.
[18] Vitelco Comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 34-35.
[19] Comments of the Nebraska Rural Independent Companies, CC Docket No. 96-45, FCC 00J-3, November 2, 2000, at 8.
[20] TCA, Inc. reply comments, CC Docket No. 96-45, March 14, 2001, at 8.

otherwise be recovered and are above and beyond what can be recovered via company rates.[21]

V. CONCLUSION

The Act's mandate states nothing about restricting support due to growth in the fund, and decisions concerning universal service support mechanisms should not be made on the basis of a mechanism's fund-sizing ability. The Commission cannot comply with the Act's "sufficiency" requirement if it arbitrarily imposes a cap or a freeze on individual or overall support merely to restrict fund growth. The Commission therefore should refrain from freezing ILEC support upon competitive entry, base ILEC support on ILEC costs, and avoid adopting rules that provide support to CETCs on the basis of the ILEC's cost.

Respectfully submitted,

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[21] Some have urged the FCC to establish a means of determining stranded investment and authorizing gradual phase down of USF support resulting from the investment. *See*, for example, Comments of Bristol Bay Telephone Coop, Inc., Manti Telephone Company, Chugwater Telephone Company, in CC Docket No. 96-45, FCC 00J-3, filed on November 3, 2000. *See also*, Comments of Iowa Telecom, CC Docket No, 96-45, at 8.

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, CC Docket No. 00-256, FCC 01-157 was served on this 30th day of July 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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